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Order 2002-9-7

Served: September 11, 2002



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 10th of September, 2002

Application of

**VALLEY AIR EXPRESS, INC.
(formerly SunAir Express, LLC)**

for authority to engage in scheduled passenger
operations as a commuter air carrier under 49
U.S.C. 41738

Docket OST-02-13159- 5

ORDER REVOKING COMMUTER AND AIR TAXI AUTHORITY

Background

By Order 2001-4-25, issued April 19, 2001, the Department found SunAir Express, LLC (SunAir) fit to conduct scheduled passenger operations as a commuter air carrier. On April 27, 2001, we made that authority effective.¹ SunAir operated under that authority until on or about September 29, 2001.

Section 204.7 of the Department's Regulations (14 CFR 204.7) provides that, if a carrier ceases conducting the operations for which it was found fit, willing, and able, its DOT authority to conduct those operations is automatically suspended as of the date that those operations ceased. Moreover, it cannot resume operations unless the Department determines that it is fit to do. If a carrier wishes to resume operations, it must file a notice of intent with the Department accompanied by updated fitness information. The notice must be filed within one year of the date of cessation of operations or the carrier's authority can be revoked under the provisions of section 204.7 for reason of dormancy. Thus, under section 204.7, SunAir's commuter authority was automatically suspended as of September 29, 2001, and it had one year from that date to resume operations or its authority would be revoked.

¹ See Order 2001-5-6, issued May 8, 2001.

In May 2002, we were notified that SunAir had been sold, that it had changed its name to Valley Air Express, Inc. (Valley Air), and that it was making plans to resume commuter operations.

The Current Application

On August 16, Valley Air filed an application in Docket OST-02-13159 for a redetermination of fitness in order to resume scheduled passenger operations under SunAir's commuter authority. Valley Air indicates that it is currently operating on-demand charter service within the State of California and that, if it is found fit to do so, it intends to operate six daily scheduled passenger flights between Santa Rosa and Oakland, California, beginning September 16, 2002.

In the course of reviewing the application, we advised Valley Air that it was unlikely that we could complete our review of its fitness to resume operations by its proposed September 16 start-up date, particularly since we would need additional information from the carrier in support of its application. During those conversations, Valley Air questioned whether it could conduct its proposed operations as an *intrastate* carrier without receiving the Department's economic authority, since its flights would be operated solely within the State of California. We advised the carrier that, in order to do so, it would have to relinquish its suspended commuter authority and its existing on-demand air taxi authority that allows it to operate *interstate* (and foreign) service.²

On September 3, Valley Air submitted a letter relinquishing both its suspended commuter authority and its air taxi authority so that it could conduct its proposed scheduled operations immediately as an *intrastate* carrier. Valley Air also advised us that it wished to continue to pursue its application for a fitness determination in order to receive new commuter authority as an *interstate* carrier.

Decision

In light of Valley Air's request to relinquish its existing authority, we are revoking the commuter authority issued to SunAir by Order 2001-5-6 and canceling its air taxi registration as most recently approved on July 29, 2002. We are also dismissing that portion of Valley Air's application in Docket OST 02-13159 that proposes to resume operations under SunAir's authority, and will treat the rest of that application as a

² In this regard, we advised Valley Air that, once a carrier holds *any interstate* authority from the Department, it must hold DOT economic authority for *all* of its operations, including those conducted between points within the same state. It cannot conduct some operations under DOT authority and other operations without such authority. Thus, to the extent that Valley Air continues to hold its Part 298 registration authorizing *interstate* operations, it must also hold effective commuter authority from the Department if it wants to offer any scheduled flights in excess of the four weekly round trips currently allowed air taxi operators under Part 298.

request for new commuter authority. In a separate document, we will be seeking additional information from the applicant in support of its fitness.

As a result of this action, Valley Air is *not* authorized to engage in *any* interstate or foreign air transportation operations.

ACCORDINGLY, acting under authority assigned by the Department in its Regulations, 14 CFR 385.12:

1. We revoke the commuter authority issued to SunAir Express, Inc., by Order 2001-5-6.
2. We cancel the air taxi registration of Valley Air Express Inc., as most recently approved on July 29, 2002.
3. We dismiss that portion of the application filed by Valley Air Express, Inc., in Docket OST-02-13159 that proposes to resume operations under the authority held by SunAir Express, Inc., and will treat the remaining portion as a request for new commuter authority.
4. We will serve a copy of this order on the persons listed in Attachment A.

Persons entitled to petition the Department for review of this order under the Department's Regulations, 14 CFR 385.30, may file their petitions within 10 days of the service date of this order.

This action in this order is effective immediately and the filing of a petition for review shall not alter its effectiveness.

By:

RANDALL D. BENNETT
Director
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(SEAL)

*An electronic version of this document is available on the World Wide Web at:
<http://dms.dot.gov>*

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